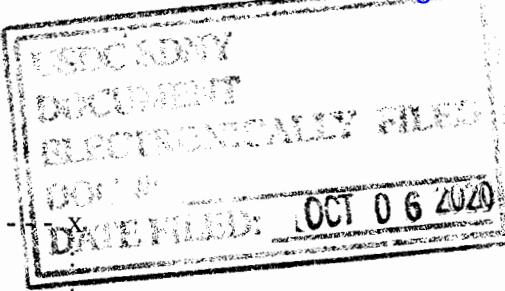


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----
MARK COX

Plaintiff, :

ORDER

: -against- :

17 Civ. 6081 (GBD) (KNF)

GERMAN KITCHEN CENTER LLC et al., :

Defendants. :

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GEORGE B. DANIELS, United States District Judge:

Plaintiff objects to Magistrate Judge Fox's September 2, 2020 order (the "Order"), (ECF No. 56), requiring compliance with Defendants' subpoena request to produce income tax returns of Mark Cox and Mark Cox Designs, Inc. A magistrate judge's order on a nondispositive matter to which timely objections are made is reviewed for clear error. Specifically, a court must "modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). "An order is clearly erroneous only when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Khaldei v. Kaspiev*, 961 F. Supp. 2d 572, 575 (S.D.N.Y. 2013) (citing *Surles v. Air France*, 210 F.Supp.2d 501, 502 (S.D.N.Y. 2002)). "It is contrary to law if 'it fails to apply or misapplies relevant statutes, case law or rules of procedure.'" *Id.* (citing *MacNamara v. City of New York*, 249 F.R.D. 70, 77 (S.D.N.Y. 2008)).

In ordering Plaintiff to produce the relevant tax returns, Magistrate Judge Fox rejected Plaintiff's argument that service of the subpoena was defective. (*See* Order at 15–16.) Further, Magistrate Judge Fox determined that Plaintiff did not serve timely written objections to Defendants' subpoena as required by Rule 45(d)(2)(B). (*See* Order at 18.) Finally, Magistrate

Judge Fox concluded that even if timely filed, Plaintiff's objections should be rejected because the requested tax returns are relevant and proportional to the needs to the case and not unduly burdensome. (*See id.*)

Having reviewed the Order, as well as Plaintiff's objections and Defendants' responses, this Court overrules Plaintiff's objections. Plaintiff does not object to either of Magistrate Judge Fox's procedural conclusions, including the fact that Plaintiff's challenge should be rejected because he failed to file timely objections to Defendants' subpoena. Absent unusual circumstances and good cause, “[t]he failure to serve written objections to a subpoena within the time specified by Rule 45(c)(2)(B) typically constitutes a waiver of such objections.” *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 48 (S.D.N.Y. 1996) (citations omitted). Plaintiff has not proffered any circumstances warranting excusal of his failure to comply with Rule 45.

The Order is affirmed. Plaintiff shall comply with the Order to produce income tax returns of Mark Cox and Mark Cox Designs, Inc. upon expiration of this Court's stay of the Order on October 9, 2020.

Dated: New York, New York
October 6, 2020

SO ORDERED.



GEORGE B. DANIELS
United States District Judge